

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

TIME FRAME, INC.,

Respondent.

CASE NO. OSH 2008-6

ORDER NO. 286

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on July 8, 2008 by conference call, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and Fred Wilen, for Respondent, by telephone, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:

- A. Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$1,125.00, resulting from Inspection No. 311429369, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1926.501(b)(3) [Refer to chapter 12-121.2, HAR] was violated because:

Employees were exposed to an unprotected lanai opening and were not protected from a fall hazard of 10 feet to the lower level, thus exposing them to serious injuries.

- B. Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$1,125.00, resulting from Inspection No. 311429369, was valid and proper.

Citation 1, Item 2 alleged:

29 CFR 1910.178(l)(1)(ii) [Refer to chapter 12-129.1, HAR] was violated because:

An employee who had not successfully completed the required training was permitted to operate a Gradall forklift. The lack of a trained operator exposed employees to serious injuries from struck-by hazards.

- C. Whether Citation 1, Item 3, including the characterization as "Serious" and the associated penalty of \$900.00, resulting from Inspection No. 311429369, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1926.1052(c)(1) [Refer to chapter 12-154.1, HAR] was violated because:

Two sets of stairways with 8 risers were not provided with stairrail systems. The lack of stairrails exposed employees to serious injuries from fall hazards.

- D. Whether Citation 2, Item 1, including the characterization as "Repeat" and the associated penalty of \$6,000.00, resulting from Inspection No. 311429369, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Two employees exposed to a 20 foot fall to the lower level were not protected from serious injuries or death by any type of conventional fall protection.

- E. Whether Respondent may rely on the affirmative defense of employee misconduct.

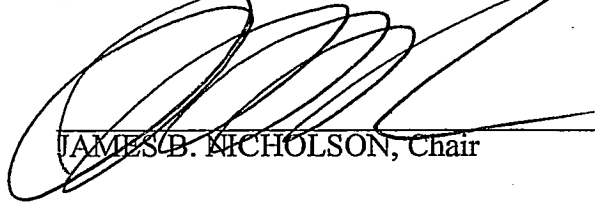
2. The deadline for filing of the parties' final naming of witnesses is **August 8, 2008**. Each party shall file with the Board the original and four copies of its list of witnesses it plans to call at trial, along with the witnesses' addresses and brief summary of expected subject of their testimony, with a certificate

of service to the other party, by this date. Each party shall also exchange any expert witness reports by this date.

3. The discovery cutoff date is **September 8, 2008**. All other discovery and information requests, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **October 8, 2008 at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, July 9, 2008.

HAWAII LABOR RELATIONS BOARD


JAMES B. NICHOLSON, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General
Fred Wilen